

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE: : **Chapter 13**
Steven R. Kennedy and :
Shirley R. Kennedy : **Case No.: 1:16-bk-01913-RNO**
Debtors :
:

**OBJECTIONS OF CAPITAL REGION WATER TO PROPOSED SALE OF REAL
PROPERTY LOCATED AT 125-127 SOUTH 14TH STREET, HARRISBURG, DAUPHIN
COUNTY, PENNSYLVANIA FREE AND CLEAR OF LIENS, CLAIMS AND
ENCUMBRANCES.**

AND NOW comes Capital Region Water, by and through its attorneys, Salzmann Hughes, P.C., who files these objections to the Proposed Sale of Real Property located at 125-127 South 14th Street, Harrisburg, Dauphin County, Pennsylvania Free and Clear of Liens, Claims and Encumbrances, and in support thereof, states the following:

1. On February 14, 2018, Debtors provided a Notice to Creditors that they filed a Motion to Approve Sale of Real Property Free and Clear of Liens, Claims, and Encumbrances relating to the Debtor's real property located at 125-127 South 14th Street, Harrisburg, Dauphin County, Pennsylvania (the "Property").
2. The Property is served with water and sewer by Capital Region Water.
3. There remains a past-due and owning balance of \$5,123.55 for the water and sewer services provided by Capital Region Water at the Property, as evidenced by the documents attached hereto as Exhibit A.
4. As such, Capital Region Water has a municipal claim in the amount of \$5,123.55 on the Property.
5. Pursuant to the Bankruptcy Code, a trustee may sell property free and clear of any interest therein only if:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding to accept a money satisfaction of such interest.

11 U.S.C.A. § 363(f).

6. Pennsylvania law governing municipal claims states that a municipal claim “shall have priority to and be fully paid and satisfied out of the proceeds of any judicial sale of said property, before any other obligation, judgement, claim, lien or estate with which the said property may become charged, or for which it may become liable....” 53 P.S. 7106(a)(1); *see also EMC Mortgage Corp v. Lentz*, 971 A.2d 112, 115 (Pa. Commw. Ct. 2009) (holding that a municipal claim had priority to be paid in full over other liens on a property).

7. Accordingly, under applicable nonbankruptcy law, the municipal claim held by Capital Region Water on the Property has priority and must be paid in full upon any sale of the Property.

8. Furthermore, nonbankruptcy law would only permit the sale of the Property free and clear of Capital Region Water’s lien through the procedures established in the Real Estate Tax Sale Law, 72 P.S. §§ 5860.101, *et seq.*

9. The Real Estate Tax Sale Law requires that a property first be put up for public auction at an Upset Sale, which would include a minimum bid at a price sufficient to satisfy all municipal claims against the property, then, if the property fails to sell at the Upset Sale, the property must again be put up for public auction at a Judicial Sale, where the winning bidder obtains the property free and clear of all liens.

10. Capital Region Water, therefore, objects to the proposed sale of the Property free and clear of its interests therein.

WHEREFORE, Capital Region Water respectfully requests that this Honorable Court grant their Objections and order that the municipal claim held by Capital Region Water on the real property located at 125-127 South 14th Street, Harrisburg, Dauphin County, Pennsylvania in the amount of \$5,123.55 shall be paid in full through the proceeds of the sale of the real property, or, in the alternative, that the sale be prohibited.

Respectfully submitted,

SALZMANN HUGHES, P.C.

Date: 3/7/2018

By: /s/ Stephen T. Coccorese
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79 St. Paul Drive
Chambersburg, PA 17201
(717) 263-2121
Fax (717) 263-0663
Attorneys for Plaintiff

EXHIBIT A



**CAPITAL REGION.
WATER**

Account: [REDACTED] 035-0
Property Address: 125 S 14TH ST
HARRISBURG PA 17104
Property Owner: STEVEN R KENNEDY

Requested By: EMILY - SALZMANN HUGHES
Email:

Date Prepared: 03/07/2018
Preparer's Initials: NSB

Telephone: 717-263-2121
Cell Phone:

Previous Balance: \$ 3,346.05
BANKRUPTCY

New Charges: 1,177.50

Utility Bill Due: \$ 5,123.55

Lien Balance: \$ 0.00

Includes Payments Received Up To: 10/02/2015
Last Billed Meter Reading: 4014287 (ESTIMATE READ)
Final Meter Reading: 0
Consumption Usage: 0
Balance Valid Until: 03/21/2018
Other Fees: (Settlement Sheet) \$PER WENDY.S NO CHARGE (Paid)

Do not pay utility balance until after settlement.

At the time of settlement, the buyer and seller must agree on the distribution of any existing credit balances. After settlement, refunds will not be issued by Capital Region Water for credit balances or duplicate utility payments.

If you fail to have the water service terminated in your name, you may be responsible for future debts incurred against this property.

**If you are an ACH subscriber, please ensure that you stop the automatic withdraw from your account for payment of your utility bill. No refunds will be issued for failure to stop the automatic withdraw for payment of your utility bill. Please call 1-888-510-0606.

This settlement sheet may not identify all judgements which may exist against the seller and which may encumber this property. It is, therefore, recommended that a search of the judgement docket be done at the Dauphin County Courthouse.

Lien Status: NO LIEN BALANCE WAS IDENTIFIED FOR THIS PROPERTY.

Comment: BANKRUPTCY BALANCE - \$3,346.05 - MISSING METER

*** End of Report ***

Capital Region Water | Billing & Collections Unit
100 Pine Drive, Harrisburg, PA 17103 1-888-510-0606
capitalregionwater.com

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ORDER

AND NOW, this ____ day of _____, 2018, based upon the Objections of Capital Region Water, it is hereby ORDERED and DECREED that Capital Region Water's Objections are GRANTED and the municipal claim held by Capital Region Water on the real property located at 125-127 South 14th Street, Harrisburg, Dauphin County, Pennsylvania in the amount of \$5,123.55 shall be paid in full through the proceeds of the sale of the real property.